



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,118	09/21/2001	Steven R. Pearson	BEA920010027US1	5751

49056 7590 01/18/2007  
LIEBERMAN & BRANDSDORFER, LLC  
802 STILL CREEK LANE  
GAITHERSBURG, MD 20878

EXAMINER
----------

FILIPCZYK, MARCIN R

ART UNIT	PAPER NUMBER
----------	--------------

2163

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/960,118

Applicant(s)

PEARSON, STEVEN R.

Examiner

Marc R. Filipczyk

Art Unit

2163

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*Response to Amendment*

This Action is responsive to Applicant's response filed on November 13, 2006

Claims 1-14 are cancelled and new claims 15-32 are submitted for examination.

**To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).**

*Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth whether the invention accomplishes a practical application and whether it generates a useful, concrete and tangible result.

The guidelines explain that a practical application of a 35 U.S.C. 101 judicial exception is claimed if the claimed invention physically transforms an article or physical object to a different state or thing, or if the claimed invention otherwise produces a useful, concrete, and tangible result.

In the present case, independent claims 15, 21 and 27 do not involve transformation of article or physical object to a different state or thing, they merely recite processing data items. Further, independent claims 15, 21 and 27 do not produce a useful, concrete, and tangible result,

Art Unit: 2163

but merely attempt to compile data to a single output. State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02.

Claims 15, 21 and 27 taken as a whole are directed to a mere method and program listing, i.e., to only its description or expression, is descriptive material per se, do not comprise a practical application as explained above hence are nonstatutory.

Since the claimed invention, as a whole, does not comprise a practical application as explained above, claims 16-20, 22-26 and 28-32 which depend from claims 15, 21 and 27 respectively, are deemed to be directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15, 21 and 27, claim 15 being exemplary, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter of 1) "creating a binary tree with a root node and multiple external nodes, wherein a quantity of nodes in said tree is equal to a number of input data streams...", 2) "hierarchical manner", 3) "compiling a single output..." and 4) "resolving comparison of duplicate identifiers through an identification process" were not described in the specification in such a way as to reasonably convey to one skilled in the relevant

art that the inventor, at the time the application was filed, had possession of the claimed invention.

Claims 16-20, 22-26, 28-32 depend from claims 15, 21 and 27, respectively and are therefore rejected on the same basis.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 15, 21 and 27, claim 15 being exemplary, the phrase “external nodes” is indefinite. They are not defined in the disclosure and their metes and bounds are not clear. The term “hierarchy” and “hierarchical manner” are indefinite. Although the general meaning of hierarchy is well known, the concept of promoting data of nodes through a tree in a hierarchical manner is not clear as claimed. Further, in the promoting limitation, the segment of “if said status identifiers are unequal...” is indefinite. The limitation/claim is incomplete because it does not account for identifiers being equal. The segment of “compiling a single output” is indefinite. The process of how the compiling is performed to derive a single output is not clear. The phrase, “identification process” is indefinite. It is not clear what the metes and bounds of identification process are. Last, the limitation of “remembering... first data item in a first of said nodes

Art Unit: 2163

remained in said node” is indefinite. It is not clear what data is remembered and/or how it is used.

Regarding claims 18, 24 and 30, the “term dine” is indefinite. It is not clear what the metes and bounds of dine are.

Claims 16-20, 22-26, 28-32 depend from claims 15, 21 and 27, respectively and are therefore rejected on the same basis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 15-32 are rejected under 35 U.S.C. 102(a) as best as Examiner is able to ascertain as being anticipated by Applicant’s Admitted Prior Art (AAPA), Applicant’s Disclosure.**

Regarding claims 15, 21 and 27, Smith discloses a method, program and system for implementing replacement selection method: (page 1, lines 5-8 and page2, lines 11-15, AAPA)

creating a binary tree with a root node and other nodes; (fig. 5A, items 520-525 and see nodes)

processing data items; (fig. 5A)

promoting data items; (fig. 5A, items 520-525 and 510-515)

compiling data streams; (fig. 5A)

processing a single output stream; (page 1, par. 5, lines 1-11)

resolving a data item being processed from a second input stream as being a duplicate of a previously processed data item from a first input stream based on said assigned duplicate data item; (fig. 5A, nodes and page 1, par. 6, lines 3-5, *duplicate*)

processing and promoting data items from said second input stream responsive to said assigned duplicate status identifier (page 1, par. 5, lines 8-11 and par 6, line 4).

*(Note: AAPA teaches any number of input streams represented by the letter N)*

Regarding claims 16-20, 22-26 and 28-32 AAPA discloses all the subject matter claimed in the rejection above, in addition AAPA teaches each node of the selection tree comprises an identifier of one of the input streams, and a reference to a data item being processed from that one of the input streams (fig. 5A, item 500 and nodes), value numbers to signify relationships between the keys (identifiers), see (page 1, par. 6, lines 5-8) and that the method is a replacement selection method using a loser oriented selection tree (fig. 5 and page 1, paragraphs 5 and 6).

### ***Response to Arguments***

Applicant's arguments filed November 13, 2006 have been fully considered but they are not persuasive. The arguments and responses are listed below.

On pages 7 and 8 of the 11/13/06 response, Applicant requests that by canceling old claims and submitting all new claims all 35 U.S.C. 112, second paragraph rejections should be withdrawn.

Art Unit: 2163

Examiner disagrees. Applicant's amendment did not overcome all the indefiniteness issues previously raised, for details please see rejection above. Many new rejections are raised. Further, Applicant is reminded to comply with 35 U.S.C. 132 requirement, to provide a detailed mapping to the disclosure for support of any new or amended claims.

On page 10 of the 11/13/06 response regarding AAPA, Applicant argues that AAPA does not manage an odd number of three or greater of input streams.

Examiner disagrees. The argued feature is not claimed. It is noted that the features upon which applicant relies (odd number of three or more) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, AAPA generally permits merging any number of input streams (see page 1, par. 5, lines 10-11, AAPA), any number including both odd and even number of input streams.

With respect to all the pending claims 15-32, Examiner respectfully traverses Applicants assertion based on the discussion and rejection above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**



Art Unit: 2163

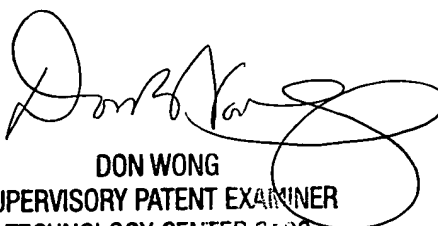
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R. Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MF  
January 11, 2007

  
DON WONG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100